




MEMORANDUM

DATE	July 7, 2011
TO	Patti Bowers, Executive Officer California Board of Accountancy Department of Consumer Affairs
FROM	 Kristy Shellans, Senior Staff Counsel Division of Legal Affairs, Department of Consumer Affairs
SUBJECT	Legality of Requiring Upper Division Courses to Meet the Accounting Study or Ethics Study Guidelines Promulgated Pursuant to SB 819 (Stats. 2009, ch. 308)

Question

May the Accounting Study and Ethics Study Guidelines required to be adopted as regulations by the California Board of Accountancy (CBA) legally include a requirement that units be acquired from upper division courses?

Conclusion

No. The plain meaning of Sections 5094 and 5094.6 of the Business and Professions Code is clear that education obtained at "other" accredited institutions of learning includes coursework obtained from a community college. Community colleges are accredited, degree-granting institutions of learning. A rulemaking that resulted in the CBA not recognizing education obtained from a regionally or nationally accredited community college would have the legal effect of nullifying or rendering superfluous the language in the CBA's statutes that would otherwise qualify an applicant for licensure using units obtained at a community college. The CBA has no discretion to adopt a regulation that is inconsistent with its authorizing statutes.

Background

Senate Bill 819 ("SB 819" -- Stats.2009, ch. 308 enacted at Sections 5092, 5094, 5094.5, 5094.6 and 5094.7 of the Business and Professions Code) requires, among other things, that the CBA establish two committees: the Accounting Education Committee (AEC) and the Ethics Curriculum Committee (ECC). Those committees are charged with developing proposed guidelines for the CBA that would set new requirements for applicants seeking licensure as a certified public accountant (CPA) by January 1, 2014. Those new requirements include an additional 20 units of accounting study and 10 units of ethics study. (Bus.&Prof. Code, §5094(b).) Those new educational requirements are required to be



adopted by regulation by January 1, 2012 and January 31, 2013, respectively (Bus.&Prof.Code, § 5094.6(b), (c)).

At the joint committee meeting of the Accounting Education Committee (AEC) and the Ethics Curriculum Committee (ECC) on June 7, 2011, both committees recommended that some of the educational units needed to satisfy the new educational requirements had to be earned at the "upper division or higher" level. During the meeting, the issue was raised that upper division or higher courses are not taught at the community colleges. In consideration of that fact, I expressed concern that any proposal that would effectively prohibit an applicant from satisfying the additional requirements through enrollment in community college courses could conflict with the requirements of the Accountancy Board's laws that require education to be obtained at a "degree-granting university, college **or other institution of learning** accredited by a regional or national accrediting agency..." (emphasis added; Bus.&Prof.Code, § 5094(b)). At the meeting, the Committee requested that I have my opinion reviewed and confirmed by our office. In response to the Committees' requests you have requested a formal legal opinion from the Legal Office regarding whether the AEC and ECC's proposed regulations can legally include a requirement that courses be obtained at the upper division level.

Analysis

A. *The plain meaning of the CBA's statutes compels an interpretation that courses offered at community colleges qualify as a method for satisfying the new accounting or ethics study educational requirements.*

If no ambiguity exists, the plain meaning of the statute controls and no further construction is necessary. (See generally, *Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438.) There is a presumption that every word, phrase or provision of a statute was intended by the Legislature to have meaning, therefore each word should be given effect in construing the statute. (*Prager v. Israel* (1940) 15 Cal.2d 89, 93; *Zorro Inv. Co. v. Great Pacific Securities Corp.* (1977) 69 Cal.App.3d 907, 913.) It is assumed that when enacting a statute, the legislature is deemed to be aware of statutes already in existence and to have enacted new laws in light of the existing law with an intent to maintain a consistent body of statutes (*People v. Harrison* (1989) 48 Cal.3d 321, 329 citing *People v. Overstreet* (1986) 42 Cal.3d. 891,897; *Burlington Northern and Sante Fe Ry. Co. v. Public Utilities Com'n* (2003) 112 Cal.App.4th 881, 889.) Courts neither presume that the Legislature performs idle acts nor construe statutory provisions in a way that renders them superfluous. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390 citing (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22.)

At the June 7, 2011 joint committee meeting, the AEC formally recommended that 6 units of Accounting Study be earned in an upper division or higher course or courses as part of its recommended guidelines. The ECC committee recommended that a minimum of 4 units or 3 semester units be completed in an upper division or higher course or courses. It is my understanding that community college courses would not qualify under these proposals since community colleges do not offer upper division or higher courses.

In 2001, Section 5094 of the Business and Professions Code was enacted and provided that, in order for education to qualify for CPA licensure, it "shall", in part, meet the following standard:**"(b) At a minimum, education must be from a university, college, or other institution of learning accredited by a regional institutional accrediting agency** included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 and following)."

(Stats.2001, ch. 704 (SB 133).)

In 2002, the words "or national" were added to Section 5094 to authorize education gained from "nationally accredited" institutions to qualify. (Stats.2002, ch. 1879 (SB 1244).) With the enactment of SB 819 in 2009, new educational requirements for accounting study and ethics were added to the existing language at Business and Professions Code section 5094, so that the text now states, in pertinent part, as follows:

(a) In order for education to be qualifying, it shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education must be from a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001, et seq.) **and, after January 1, 2014, shall also, at minimum, include 10 units of ethics study** consistent with the regulations promulgated pursuant to subdivision (b) of Section 5094.6 **and 20 units of accounting study** consistent with the regulations promulgated under subdivision (c) of Section 5094.6. The Accounting Education Advisory Committee established under Section 5094.5 may determine that a course or a portion of a course satisfies the ethics study requirement. Nothing herein shall be deemed inconsistent with prevailing academic practice regarding the completion of units. (Emphasis added.)

The foregoing language clearly sets forth the "minimum" amount of qualifying education that an applicant "shall" receive and what the CBA must accept: education from an accredited degree-granting university, college, or "other institution of learning." This language does not permit the CBA discretion to go




"higher" in setting the "minimum" standards for accepting education from particular schools and not accept units earned at "other" accredited institutions. Rather, Section 5094 expressly states that education "must be from" "other institutions of learning." Thus, the "minimum" educational standard for licensure includes education completed at other accredited institutions.

In addition, SB 819 added Section 5094.6. Section 5094.6(a) specifically permits the ECC recommendations for the ethics study requirement to include education obtained at the following educational institutions: "Ethics study may consist of academic **courses**, portions of courses, or independent study **offered by degree-granting universities, colleges, or other institutions of learning accredited by a regional or national accrediting agency.**" (Emphasis added.)

By law, community colleges may issue Associate Degrees in various fields. (See Education Code sections 70901 and 70902 and, Title 5, California Code of Regulations Section 55063 for minimum standards for issuance of an associate degree.) It is my understanding that Community Colleges are typically fully accredited by the Western Association of Schools and Colleges (WASC), Accrediting Commission for Community and Junior Colleges (ACCJC). The Western Association of Schools and Colleges (WASC) is a private accrediting organization that is recognized as an accrediting agency by the Department of Education pursuant to the Higher Education Act and is one of six regional associations that accredit public and private schools, colleges, and universities in the United States. WASC's Accrediting Commission for Community and Junior Colleges (ACCJC) accredits associate degree granting institutions in the Western region of the U.S, like the community colleges in California.

Based upon the foregoing facts, a community college would necessarily be a degree-granting "other institution of learning accredited by a "regional ... accrediting agency." While not considered four-year colleges or universities, community colleges are, nonetheless, degree-granting accredited institutions of learning. Further, the statute's command that this type of education be accepted is unequivocal. Section 5094 expressly states that education obtained at accredited educational institutions "shall" qualify and shall include coursework that meets the minimum standards set by the ECC and AEC. Therefore, the CBA must accept units obtained at qualifying accredited institutions and must require that such units include other mandatory coursework. The Legislature's use of the word "and" indicates that both requirements (attend qualifying, accredited institution and meet the new 30-unit guidelines developed by the AEC and ECC) must be obtained to meet CBA's new educational requirements for CPA licensure. In other words, the AEC's and the ECC's recommendations must co-exist with and not override the express statutory provisions applicable to CPA licensure, including the types of educational institutions where education must be obtained. However, the recommendations of the AEC or ECC to only accept upper division units for particular courses have the practical and legal effect of eliminating the statutory provisions that permit education obtained at "other



institutions of learning", including a community colleges, as a pathway to eligibility, rendering the provisions of the statutes that authorize such education void and superfluous. In short, the AEC's and ECC's recommendations are tantamount to saying community college coursework does not meet the CBA's requirements when Sections 5094 and 5094.6 say that education "shall" or "may consist of" coursework obtained at these accredited "other institutions of learning."

However, we believe that a court would not support the AEC's and ECC's current interpretation that only upper division coursework will be acceptable when the language is clear and there is nothing in the CBA's statutes or the legislative history of Sections 5094 or 5094.6 that would indicate that education obtained from these schools should not be recognized.¹ In fact the Legislature's enactment of substantially similar language at Section 5094.6, which allows coursework obtained from accredited "other institutions of learning" for ethics, further supports the plain meaning of Section 5094 that education obtained at a community college satisfies CBA's requirements, even if it is not upper division.

As a result, the plain meaning of Sections 5094 and 5094.6 of the Business and Professions Code is clear that education obtained at "other" accredited institutions of learning includes coursework obtained from a community college.

B. The Board has no authority to adopt a regulation that is inconsistent with its statutes.

"Administrative bodies and officers have only such powers as have expressly or impliedly been conferred upon them by the Constitution or by statute." (See, e.g., *County of Alpine v. County of Tuolumne* (1958) 49 Cal.2d 787, 797; *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.) Under the Administrative Procedure Act ("Act" -- Gov. Code §§ 11340 and following), the law that governs the adoption of regulations by state agencies, the Act specifically forbids adoption of regulations that are inconsistent, as follows:

Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Gov. Code, § 11342.2.)

¹ Section 76 of SB 819 (express legislative intent language) merely indicates that education "must be relevant to the practice of accountancy and must include ethical education for the protection of the public."

Furthermore, the California Court of Appeal has stated that "In the absence of valid statutory or constitutional authority, an administrative agency may not, under the guise of regulation, substitute its judgment for that of the Legislature. Administrative regulations in conflict with applicable statutes are null and void." (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347 citing *Harris v. Alcoholic Bev. Etc. Appeals Bd.* (1964) 228 Cal.App.2d 1, 6; *Hodge v. McCall* (1921) 185 Cal. 330, 334.) The Court has further stated that an agency has no discretion to adopt a regulation that is in conflict with or which alters or violates a statute. (*Graham v. State Bd. of Control* (1995) 33 Cal.App.4th 253, 260.)

As discussed previously, it is our interpretation that the CBA's statutes at Sections 5094 and 5094.6 of the Business and Professions Code allow applicants to satisfy the new educational requirements through completion of course work at accredited community colleges as well as at degree-granting universities or colleges.² As a result, the AEC's and ECC's currently proposed guidelines would conflict with these statutes by causing the CBA to not accept units in accounting study and ethics earned from courses taken at a community college. A rulemaking that resulted in the CBA not recognizing education obtained from a regionally or nationally accredited community college would have the legal effect of nullifying or rendering superfluous the language in the CBA's statutes that would otherwise qualify an applicant for licensure using units obtained at a community college. If adopted as written, these proposals could be subject to disapproval by the Office of Administrative Law ("OAL"-- the agency that would review the proposed regulations), or subject the CBA to judicial attack for adopting a regulation that is inconsistent with and not authorized by its current statutes.

Due to the fact that the ECC's recommendations are binding on the CBA, we recommend that the Board refer these proposals back to the ECC to request that they reconsider their recommendation in light of the legal opinion on this issue.³ With respect to the AEC's recommendation, we recommend that the Board remove any upper division course restrictions from the accounting study guidelines before initiating any rulemaking on the matter.

I hope that this was responsive to your request. Please feel free to contact me if you need further clarification.

² This does not alter the other educational requirements that include that the applicant also present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by an accredited degree-granting institution in specified subjects. (Bus.&Prof.Code, §5093.)

³ Section 5094.6(b) of the Business and Professions Code requires the CBA to adopt "without substantive changes" the ECC's recommendations.